



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. ALICIA LEAH GILSTRAP
CR-13-0379-PR**

PARTIES:

Petitioner: Alicia Leah Gilstrap ("Gilstrap")

Respondent: State of Arizona ("the State")

FACTS:

Overview. This appeal arises out of Gilstrap's conviction for possession of methamphetamine, marijuana, and drug paraphernalia. She was arrested during the search of someone else's home, after the police discovered her in the shower and found drugs and drug paraphernalia in her purse.

The Suppression Hearing. Before trial, Gilstrap filed a motion to suppress all evidence obtained from the search of her purse. The court conducted an evidentiary hearing on the motion, which revealed the following:

(1) The police obtained a warrant to search the residence of Joshua Cavender and his girlfriend, Cynthia Molines, during an investigation of allegations that they were selling methamphetamine. The warrant identified Cavender and Molines by name, and also identified the items that the police believed would be found at their home (drugs and drug paraphernalia).

(2) Officer Mann testified that when he entered the home to conduct the search, he went to the south bedroom, which was used by Molines' children. A door connecting the room to the bathroom was closed, and when Mann opened it, he found Gilstrap taking a shower. She covered herself with a towel and Mann escorted her to the living room to wait with other people who had been found in the house.

(3) Detective Stopke testified that he later found a purse in the bedroom adjoining the bathroom and searched it. The first thing he found was Gilstrap's driver's license, and, as he continued looking through the purse, he found what appeared to be marijuana and methamphetamine, as well as a scale suitable for weighing drugs. Based on that search, Gilstrap was arrested.

(4) Gilstrap also testified at the hearing. She testified that she was "staying" at the house and was "going to start" paying rent. She also admitted that she had spent the night before at the house, and slept on the couch. In the morning, she took her clothes, personal items and purse with her into the bathroom while she was showering. She testified that her purse was in the bathroom when she last saw it. Later at trial, another police officer testified that he found the purse in the bathroom, but moved it to the adjoining bedroom.

The Trial Court's Ruling. Gilstrap argued that the search of her purse was improper because she was not named in the search warrant and was merely an incidental visitor at the home. She also contended that once the police found her driver's license, they should have stopped the search and obtained a warrant. The State argued that because Gilstrap had stayed overnight and planned on staying there, her purse fell within the scope of the search warrant and was constitutionally permissible. The court agreed with the State and denied Gilstrap's motion.

The Court of Appeals' Ruling. After her conviction Gilstrap appealed to the Court of Appeals. The court affirmed the conviction, ruling (among other things) that the trial court did not err in denying her suppression motion.

The Court of Appeals noted that courts generally follow one of two approaches in "addressing whether a search warrant permits the search of an item belonging to a visitor to the premises." The first, it explained, was the "physical possession" approach, which "focuses on whether the object is in the actual physical possession of the visitor at the time of the search." The other approach, according to the court, was the "relationship" test, which focuses "on the relationship between the person whose personal effects are searched and the place which is the subject of the search." The court explained that under that standard, "if the owner of the object is more than a casual visitor to the premises, law enforcement officers may search the object pursuant to the warrant."

The court noted that no Arizona appellate decision has addressed which standard applies in Arizona, but said that it did not need to choose between the two tests because the search here was valid under either one. Thus, according to the court, the search was proper under the "physical possession" approach "because Gilstrap did not have actual physical possession of her purse" (i.e., she was not holding it) when she was found in the shower. The search also was permitted under the "relationship" test, the court reasoned, because "Gilstrap was more than a mere casual visitor, having spent the night, admitting to staying at the house with full access, and planning to begin paying rent as soon as she could afford it." Accordingly, the court concluded, the superior court did not err in denying Gilstrap's suppression motion.

ISSUE:

Is the search of a visitor's purse found pursuant to a residential search warrant and located next to her while she was showering prohibited by the Fourth Amendment? Should Arizona adopt the "possession test" or "relationship test" in determining whether the search was permissible?

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